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RIGHTS OF THE CHILD

Report of the Special Rapporteur on the sale of children, child prostitution and child pornography

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Executive summary

This report is submitted in accordance with Commission on Human Rights resolution 2001/75 and is the first report to be submitted by Mr. Juan Miguel Petit, who was appointed as Special Rapporteur on the sale of children, child prostitution and child pornography in July 2001.

The report provides an overview of the working methods which the Special Rapporteur intends to adopt, building upon the experience and activities of his predecessors and carrying the mandate forward. The report outlines the procedure which the Special Rapporteur will adopt to investigate information he receives, particularly with respect to individual complaints alleging situations of sale of children and involvement of children in prostitution or pornography. Communications will consist of urgent appeals and letters of allegation transmitted to Governments, on the basis of credible and reliable information received, concerning individual cases or country situations. Communications are intended to draw the attention of the Governments concerned to incidents, situations and conditions which require action or restraint on the part of the State. To facilitate the submission of information, the Special Rapporteur has drafted an information sheet, which is annexed to this report.

The Special Rapporteur sent two communications in 2001, to the Governments of Guatemala and Sri Lanka. Both were joint communications sent together with the mandate holder of another special procedures mechanism. The report outlines the details of the situations, the action taken and the response received.

The report details the activities which the Special Rapporteur has carried out since his appointment, including consultations and attendance at conferences.

The second part of the report provides a brief commentary on two current issues - the entry into force on 18 January 2002 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the request of the Commission on Human Rights, in its resolution 2001/51 on HIV/AIDS, that the Special Rapporteur integrate the protection of HIV-related human rights within his mandate. The link between HIV/AIDS and sexual exploitation of children is considered, and the assertion made that children are at greater risk of contracting the virus than adults when both are in prostitution, given their comparative physical weakness and lack of knowledge and experience as to how to protect themselves.

Introduction

1. At its fifty-seventh session, in its resolution 2001/75 of 25 April 2001, the Commission on Human Rights welcomed the report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2001/78 and Add.1-2). In the same resolution, the Commission decided to renew the mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography for a further three years and requested the Special Rapporteur to submit a report to the Commission on Human Rights at its fifty-eighth session. The present report is submitted in accordance with that request.

2. Following the resignation in April 2001 of Ms. Ofelia Calcetas-Santos (the Philippines), who had served as mandate holder since her appointment in 1995, Mr. Juan Miguel Petit (Uruguay) was appointed Special Rapporteur on the sale of children, child prostitution and child pornography in July 2001.

3. Mr. Petit, a graduate in law and social sciences, has worked for many years in the fields of journalism and social science. He was member of the Board of the National Child Institute of Uruguay (1985-1990) and has been involved in various NGO programmes for children, including the provision of assistance to street children and measures to foster conditions to encourage children to continue living at home. Mr. Petit also participated in the initial process of proposing a new national law on children's rights to the Uruguayan Parliament.

4. During the military dictatorship in Uruguay (1973-1985) he worked as a journalist and editor of opposition publications, and more recently was the editor of a monthly news magazine. Mr. Petit currently works as the technical coordinator of the National Rehabilitation Centre, a recently created initiative for the education and social reintegration of young inmates which provides access to study or work opportunities outside of prison whilst they are completing their prison sentences. He also works for the Uruguayan newspaper *El Pais*, writing about social issues.

I. WORKING METHODS AND ACTIVITIES

A. Working methods

5. The Special Rapporteur considers that the renewal of this mandate at the fifty-seventh session of the Commission on Human Rights reflects the increasing concern on a global scale of the phenomenon of the sale of children and the many diverse forms of trafficking, and both the commercial and non-commercial sexual exploitation of children.

6. Such abuses constitute some of the worst human rights violations. They heavily compromise the healthy development of children and their access to the full enjoyment of all their rights, and they increase violence at all levels of society, producing long-term damaging effects on the victims.

7. The phenomenon of abuse and exploitation appears to be growing, although it is unknown whether this is an accurate perception or whether it is simply that more is being heard about it as social taboos restricting any discussion on the issue continue to disappear. However,

it is known that the phenomenon is not one of isolated cases of bizarre behaviour by mentally disturbed offenders, but is directly related to the existence or not of a holistic approach towards children's human rights in a society, through its social policies for children, youth and the family, and its capacity to develop creative and innovative responses - from both the public and private sector - to combat new and explosive social problems.

8. The Special Rapporteur intends to continue the work of his predecessors of sensitizing Governments, private organizations and civil society in general about the necessity of intensifying efforts to prevent the sale and exploitation of children, through the development of mechanisms to prevent, detect, denounce and prosecute such abuses, and the further development of innovative programmes and social intervention to help the victims. The Special Rapporteur intends to continue to gather information from organizations working to assist children and to highlight best practices in this respect.

9. As regards the further development of the mandate, the Special Rapporteur intends to create a web site with information about the concerns of his mandate, including information as to how individuals and organizations can access the Special Rapporteur and report relevant violations. The web site will, insofar as possible, provide links to United Nations and other activities in this field.

10. The Special Rapporteur intends to build upon contacts with leading NGOs in the field of children's rights, primarily in order to exchange general and specific information, and verify cases concerning which allegations are received.

11. Provided sufficient resources are made available to the Special Rapporteur, he intends to compile a resource list of field programmes which have proved effective and whose experience could be useful in different regions.

12. The Special Rapporteur intends to propose initiatives which could be channelled through the United Nations system to encourage persons and organizations working in this field. For example, one such initiative might be the creation of an annual award for particularly creative or effective programmes or interventions.

International legislation

13. The Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which entered into force on 18 January 2002, form the foundation for determining and developing the scope of the mandate.

14. The Special Rapporteur will also consider the mandate through other United Nations international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, International Labour Organization Convention 138 concerning Minimum Age for Admission to Employment and International Labour Organization Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

15. Additionally, the following conventions and declarations are of relevance to the mandate of the Special Rapporteur: the Convention on the Elimination of All Forms of Discrimination against Women, the Declaration on the Elimination of Violence against Women, the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (known as The Beijing Rules).

Individual complaints mechanism

16. The Special Rapporteur intends to investigate information he receives alleging individual cases of the sale of children, child prostitution or child pornography.

17. His methods of work in this respect will be based upon those already adopted by other thematic mechanisms. In particular, the Special Rapporteur takes note of the methods of work used by inter alia the Special Rapporteurs on torture and on violence against women.

18. Communications to Governments will consist of urgent appeals and letters regarding allegations, sent on the basis of information received by the Special Rapporteur which cause him concern over a case or a situation involving the sale of children, child prostitution or child pornography.

19. The urgent appeals, which are essentially preventive, will be addressed directly to the Ministry for Foreign Affairs or other relevant department of the Government of the country concerned. When making a determination as to whether an urgent appeal should be sent, a certain number of factors will be taken into account, in particular whether the source of information is reliable and the information consistent. Corroborative or supplementary information will also be immediately sought from sources other than the alleged victims or their representatives.

20. The letters regarding allegations received, which may relate to individual cases or country situations, will be addressed to the Permanent Representative to the United Nations Office at Geneva of the country concerned.

21. All communications are intended to draw the attention of the Governments concerned to incidents, situations and conditions which require action or restraint on the part of the State in order to protect the rights of the child. The Special Rapporteur is eager to pursue a constructive approach for the improvement of the situation of children together with the Government(s) concerned, and accordingly will ask the Government to provide him with full details of their investigation into the allegations.

22. The Special Rapporteur considers the follow-up of cases to be an important aspect of his mandate. In this regard, where responses received from Governments to the communications sent are considered unsatisfactory by the Special Rapporteur, he will continue to seek additional information from the source or victim.

23. Regular contact will be maintained with United Nations and other international agencies working directly with affected persons, and with NGOs in order to seek information from them. For this purpose the Special Rapporteur has developed an information sheet to facilitate the submission of information. This information sheet is annexed to this report. The Special Rapporteur would like to encourage Governments, United Nations bodies, specialized agencies and intergovernmental and non-governmental organizations, to submit to him any reliable information they may possess with regard to issues of concern to his mandate.

24. A number of holders of thematic mandates established by the Commission on Human Rights have, within their mandate, responded to particular forms of violations against the rights of the child. The Special Rapporteur takes note with appreciation of such action and looks forward to developing a mutually supportive and cooperative framework for joint action.

Communications in 2001

25. In the first few months of his work, the Special Rapporteur received details of incidents of concern to his mandate and took action accordingly. In October 2001, the Special Rapporteur joined with the Special Representative of the Secretary-General on human rights defenders to send an urgent appeal to the Government of Guatemala. Also in October, an urgent appeal was sent jointly with the Special Rapporteur on violence against women, its causes and consequences to the Government of Sri Lanka.

Guatemala

Communication sent

26. On 5 October 2001, the Special Rapporteur, together with the Special Representative of the Secretary-General on human rights defenders, sent an urgent appeal concerning the threat and intimidation affecting Mr. Hector Dionicio Godinez, Coordinator of the Legal Aid Program of Casa Alianza, an NGO working to assist street children in Guatemala and other countries in the region.

27. The Special Rapporteur had received reports that on 10 September 2001 a car tried several times to force the car in which Mr. Dionicio Godinez was travelling off the road. On the same day, he reportedly received a threatening phone call at his home. It was further reported that, on 25 September 2001, he received two other threatening phone calls on his cell phone. In addition, on 26 September 2001, two unidentified men in civilian clothes allegedly broke into and tried to steal the Casa Alianza vehicle. According to the information received, this series of threats against Casa Alianza staff are connected with the suit brought by Casa Alianza before the Inter-American Court of Human Rights in Costa Rica. In this case, Casa Alianza was pressuring the Government of Guatemala to pay the required half a million dollar settlement to the families of five street children who were tortured and murdered by two Guatemalan policemen in 1990.

Observations

28. In December 2000, the Inter-American Court of Human Rights awarded damages to the families of five street children and youths who were tortured and murdered by two national policemen in Guatemala. The court ruled that the State of Guatemala had violated the American Convention on Human Rights and had to pay the elevated damages by 26 November 2001. The Special Rapporteur welcomes reports that, three weeks after the court deadline expired, the President of the Comision Presidencial Coordinadora de la Politica del Ejecutivo en Materia de Derechos Humanos (COPREDEH) complied with the court's ruling to pay over half a million dollars in damages to the families of five street children murdered in 1990 and a total of US$ 30,000 in legal costs to Casa Alianza and Center for Justice and International Law (CEJIL), the co-petitioners in this case. The Special Rapporteur would also like to encourage the initiative taken by the Government of Guatemala to re-open the criminal case against the two policemen allegedly responsible for the killing of the boys, and to enact adequate legislation to protect children better from abuse and exploitation.

Sri Lanka

Communication sent

29. On 8 October 2001, the Special Rapporteur transmitted an urgent appeal with the Special Rapporteur on violence against women, including its causes and consequences, concerning an allegation of slavery involving Ms. Palanithami Sasikala. According to the information received, Ms. Palanithami Sasikala was kidnapped on 28 September 1998 from her home on Vishu Kovil Road, Pethalai Valaichenai, by her uncle, Mr. Mudaliar Velupillai. He allegedly took her to his house and then handed her over to Mr. HHABS Opatha, an army officer attached to the Kayankeney Army Camp, Valaichenai, Batticaloa. Mr. Opatha then reportedly took Ms. Palanithami Sasikala to his mother's house in Dambulla. Since then, she has reportedly been forced to work as an unpaid domestic aid, and has not been allowed to attend school. It has been further reported that on 2 July 2001, her family filed a complaint with the Kalumunai police, who asked Mr. Opatha to report to the station, which he did. However, it is reported that Ms. Palanithami Sasikala was not released. The two Special Rapporteurs were also informed that although the family had filed another complaint, no action had yet been taken by the authorities.

Communication received

30. By letter dated 20 December 2001, the Government of Sri Lanka informed the Special Rapporteur about the case of Ms. Palanithambi Sasikaran. The Government reported that an investigation had been initiated after a complaint was made to the Human Rights Commission of Sri Lanka by an NGO, Home for Human Rights, on behalf of Ms. Palanithambi Sasikaran. According to the investigations, Ms. Palanithambi Sasikaran was handed over to Mr. Opatha of the Sri Lankan army by her grandfather when she was 12 years old and SL Rs 1,000/- per month was given to the grandfather for about one and a half years. According to the Government, there

was consensus that the child was not being kept by Mr. Opatha or his mother forcibly. Furthermore, the inquiry did not show any evidence that Mr. Opatha took the child using his authority as an officer of the army. The Government further stated that the only issue, if any, to be examined would be the question of custody of the child.

Country visits

31. The Special Rapporteur will carry out two or three fact-finding visits each year, according to the resources made available to him, and intends, wherever possible, to visit two countries during each mission. This will be particularly relevant when the issues under consideration include the trafficking of children from one country to another. In November 2001, the Special Rapporteur addressed a request to the Governments of Bolivia and of Paraguay, with a view to visiting these two countries in 2002. An invitation has been received from the Government of Bolivia.

B. Activities

32. The Special Rapporteur visited Geneva from 24 to 28 September 2001 for the purpose of holding preliminary consultations with various individuals and organizations, within the context of his mandate. He met with NGOs and requested them to continue to provide support to the mandate. He outlined his plans to take up individual complaints of violations of the rights protected by his mandate, and requested NGOs to keep him regularly informed of reported incidences of violations of children's rights around the world, as well as about events and initiatives being taken to combat such violations.

33. He met with other special rapporteurs and with relevant staff of the Office of the High Commissioner for Human Rights (OHCHR) and had the opportunity to attend the one-day special session of the Commission on Human Rights on 26 September 2001.

34. The Special Rapporteur met with the Committee on the Rights of the Child and attended its discussion day on violence against children in schools and in the family, held on 28 September 2001. The discussion focused on the prevention of violence against children both in the family environment and in schools, and on methods to protect them from such harm. The Committee recognized that different forms of violence against children, such as corporal punishment, bullying, sexual harassment and abuse, and verbal and emotional abuse were interlinked, and that violence in the home and school context reinforced one another.

35. It was recommended, among other things, that States parties be urged to repeal, as a matter of urgency, any legislation that allows violence to be used as a form of discipline within the family, contrary to the provisions of the Convention on the Rights of the Child. The Committee emphasized that violence was wrong and unacceptable under any circumstances. In addition, the Committee encouraged States parties, non-governmental organizations, United Nations human rights mechanisms, United Nations agencies and other bodies to raise awareness and bring about change in cultural attitudes to prevent and protect children from violence in the family and in schools.

36. The Special Rapporteur met with the High Commissioner and thanked her for her advice and encouragement for the challenging task he is beginning.

UNICEF Workshop on the Trafficking of Children in West and Central Africa

37. On behalf of the Special Rapporteur, a staff member of OHCHR attended the United Nations Children's Fund (UNICEF) Workshop on Policy Responses to Child Trafficking in West and Central Africa, held in Florence from 9 to 12 October 2001. The workshop concluded a comprehensive field analysis undertaken by UNICEF in eight countries of West and Central Africa (Benin, Burkina Faso, Cameroon, Côte d'Ivoire, Gabon, Mali, Nigeria and Togo) on child trafficking and provided a forum in which to discuss the research findings, present policy approaches to assist concerned organizations to develop effective responses, and discuss ways to strengthen inter-agency dialogue and collaboration.

38. The Special Rapporteur commends UNICEF for the work it has done in West and Central Africa with regard to the trafficking of children. In particular he would strongly endorse the following recommendations of the Workshop:

(i) The States which took part in the Libreville subregional consultation on the development of strategies against the trafficking of children for the purpose of exploitation through labour in Central and West Africa, which took place from 22 to 24 February 2000, should take immediate measures to implement the Libreville Platform, inter alia, through the adoption of national plans of action to combat trafficking.

(ii) With reference to the transnational character of the problem, it is vital that States in the region take measures to improve intercountry dialogue and cooperation, through adopting bilateral and multilateral technical cooperation agreements.

(iii) With regard to the criminal aspects of trafficking, States must develop appropriate legal frameworks at the national level to combat trafficking. Legislation should be drafted to reflect relevant standards of international human rights law, and States should actively pursue those criminal organizations, intermediaries and other individuals who traffic children into exploitative situations.

OMCT Conference on Children, Torture and other Forms of Violence

39. On behalf of the Special Rapporteur, a staff member of OHCHR attended an international conference entitled "Children, Torture and other Forms of Violence: Facing the Facts, Forging the Future", which was held in Tampere, Finland from 28 to 30 November 2001. The Conference was organized by the World Organization against Torture (OMCT) and the Mannerheim League for Child Welfare, with the support of the Government of Finland, and brought together 183 participants from 73 countries, representing a wide range of international and national NGOs, Governments and international organizations, including UNICEF and the International Labour Organization (ILO). During the three days of the Conference, participants

considered methods and strategies to combat violence against children. They listened to guest speakers, including the High Commissioner, as well as the Chairpersons of the Committees against Torture and on the Rights of the Child, and participated in workshops, considering thematic or regional issues.

40. On 30 November 2001, the Conference adopted the Tampere Declaration through which the participants acknowledged that there is still widespread social and cultural acceptance of various forms of violence against children in many countries and regions. It states that, whether the setting in which the violence is perpetrated is public or private, State authorities have the ultimate responsibility for deterring violence and providing effective protection and remedies, including early assistance and support to children after trauma.

41. Seeking to propose concrete measures to fight this phenomenon, the participants recommended that the Commission on Human Rights appoint a special rapporteur on violence against children, and the Declaration calls upon the Secretary-General to appoint an internationally-recognized expert to head a well-qualified team to conduct the in-depth international study on violence against children requested by the Committee on the Rights of the Child with the endorsement of the Commission on Human Rights and the General Assembly.

42. Participants at the Conference also recalled the necessity for the United Nations to mainstream the rights of the child throughout its activities.

Latin America and Caribbean regional preparatory meeting for the Second World Congress against the Commercial Sexual Exploitation of Children

43. The Special Rapporteur attended the Latin American and Caribbean preparatory meeting for the Second World Congress against the Commercial Sexual Exploitation of Children. This preparatory meeting was held in Montevideo from 7 to 9 November 2001, and was attended by representatives of Governments, United Nations agencies and NGOs from the region, who met to discuss a common strategy to fight sexual violence and exploitation against children. The meeting provided an important opportunity for discussion and exchange of ideas for a wide range of organizations and individuals fighting similar problems in the region, but who normally have few opportunities to share experiences and initiatives. Of particular importance is the Inter-American Children's Institute of the Organization of American States, which is working intensively towards the creation of a basic model of defence and recognition of the rights of the child, with the interaction of Governments and the civil society of countries in the region.

44. Participants in the Montevideo meeting concluded that many countries of the region have yet to develop a national plan of action against the commercial sexual exploitation of children, that more resources should be allocated to such plans, and that all organs of civil society should participate in the creation and monitoring of these plans. Although many countries have carried out studies on the sexual exploitation of children, participants noted that there continued to be a lack of data on the nature and extent of the problem. The participants also concluded that greater regional and international cooperation was needed to tackle the problem efficiently, and that although the majority of Latin American countries had brought their legislations into line with the Convention on the Rights of the Child, it was urgent that they did so with regard to other international human rights instruments, in order better to protect children from all human rights

violations. Participants agreed that the empowerment of children and adolescents was key to guaranteeing their role as defenders of their own rights, and that reforms were needed in the judicial process to establish "judicial procedures friendly to children and adolescents," attending quickly and respectfully to their needs.

45. At the Montevideo meeting, the Special Rapporteur reiterated his request to receive information from all countries in the region about the situation of abuse or exploitation of children in each country.

The Second World Congress against the Commercial Sexual Exploitation of Children

46. The Second World Congress against the Commercial Sexual Exploitation of Children was held in Yokohama, from 17 to 20 December 2001, coorganized by the Government of Japan, UNICEF, ECPAT International and the NGO Group for the Convention on the Rights of the Child.

47. The Congress brought together over 3,000 participants, including representatives of 132 Governments and of NGOs, United Nations agencies, the private sector and the media, as well as children and young people, who had also met in Kawasaki, Japan, from 13 to 16 December for a Youth Forum.

48. Prior to the Congress, six regional preparatory meetings had been held - in Bangkok for the East Asia and Pacific region (16-18 October 2001), in Rabat for Africa and the Middle East (24-26 October), in Dhaka for South Asia (5-6 November), in Montevideo for Latin America and the Caribbean (7-9 November), in Budapest for Eastern and Western Europe (20-21 November) and in Philadelphia for the United States of America, Canada and Mexico (2-3 December).

49. Six theme papers had been drafted prior to the Congress on the following topics: child pornography; the role and involvement of the private sector; the profile of the child sex offender; prevention, protection and recovery of children from sexual exploitation; trafficking in children for sexual purposes; international legal framework and current national legislative and enforcement responses. The texts of these papers and full details about the Congress can be found on the official Congress web site (http://www.focalpointngo.org/yokohama/).

50. The stated objectives of the Second World Congress were the following:

To enhance political commitment to the implementation of the Agenda for Action adopted at the first World Congress;

To review progress in the implementation of the Agenda for Action;

To share expertise and good practices;

To identify main problem areas and/or gaps in the fight against commercial and other forms of sexual exploitation of children;

To strengthen the follow-up process of the first World Congress.

51. Approximately 100 workshops were held during the Congress, on a variety of themes, including reviews of what had been achieved since the first World Congress, strategies as regards education, prevention of entry into and extrication from commercial sexual exploitation, and recovery and rehabilitation of child victims.

52. Developments in the fight against trafficking and child pornography were presented, as well as portrayals of regional and country-specific problems and solutions. The broad scope of the workshops demonstrated that the awareness of commercial sexual exploitation of children is continuing to grow rapidly and that many activities which are under way in different parts of the world are increasingly well-structured and coordinated.

53. The Congress highlighted some of the developments with respect to the involvement in the fight against the commercial sexual exploitation of children of the private sector, particularly the travel, tourism and communications sectors, representatives of which attended the Congress and held workshops. NGOs also reported increased collaboration with these sectors.

54. Participants regretted the lack of viable and credible data as to the numbers of children caught up in commercial sexual exploitation. One of the 12 briefing notes prepared for the Congress was entitled "Facts and figures: even one child is one too many" and explained the approximate and anecdotal nature of most attempts to arrive at exact figures, given the "invisible" nature of this type of exploitation. The briefing note refers to one country, the Philippines, in which a comprehensive survey was undertaken in 1998. Jointly commissioned by the Philippines Department of Social Welfare and UNICEF, the survey quotes a series of different estimates of the number of child victims in the country. ECPAT provides figures of 40,000 children in prostitution in 1992, rising to between 60,000 and 100,000 in 1997, and a study carried out by the University of the Philippines in 1997 quotes a figure of 100,000 for that year, 5,000 of these children being in Metro Manila.

55. The Special Rapporteur would echo the call of the Stockholm Agenda for Action and encourage States to carry out studies and make concerted efforts to collect data in order to have an accurate diagnosis as to the nature and extent of children's involvement in commercial sexual exploitation - a necessary tool for the development of effective social policies and programmes. The Special Rapporteur also encourages NGOs to carry out such studies and to collaborate with government agencies in this respect.

56. If the Congress illustrated a welcome growth in the efforts of NGOs and the private sector, it also demonstrated the lack of progress made by Governments since the first World Congress. There was little evidence of concrete steps having been taken by Governments to implement the Stockholm Agenda for Action, which they committed themselves to do five years ago. It was reported that less than half have adopted national plans of action against the commercial sexual exploitation of children, and of those which have adopted such plans, none have committed adequate financial resources for their implementation. The Special Rapporteur would encourage all States to review their commitments in this respect and to make the adoption and implementation of such plans of action a matter of the utmost priority.

II. ISSUES IN FOCUS

A. Entry into force of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

57. On 18 October 2001, Romania became the tenth State to ratify the Optional Protocol to the Convention to the Rights of the Child on the sale of children, child prostitution and child pornography. The Optional Protocol has also been ratified by Andorra, Bangladesh, Cuba, Iceland, Kazakhstan, Morocco, Norway, Panama and Sierra Leone. At the time of writing this report, 78 States had signed the Optional Protocol.

58. In accordance with its article 14.1, the Optional Protocol entered into force on 18 January 2002. State parties to the Optional Protocol are required by virtue of its article 12 to submit within two years an initial report to the Committee on the Rights of the Child. Subsequent periodic reports will be merged with regular periodic reports on implementation of the Convention on the Rights of the Child.

59. The Special Rapporteur welcomes the working definitions of "sale of children", "child prostitution" and "child pornography" which the Optional Protocol provides. However, he will continue to urge States to strive to provide a greater level of protection of children from these abuses, beyond that guaranteed by the Optional Protocol. In particular, he would urge States to review all aspects of national legislation which may affect children, and ensure that no child is ever criminalized, penalized, or stigmatized in any manner whatsoever for having been a victim of commercial sexual exploitation.

B. HIV/AIDS

Commission on Human Rights resolution on HIV/AIDS

60. In its resolution 2001/51, entitled "The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS)" the Commission on Human Rights requested all special representatives, special rapporteurs and working groups of the Commission, inter alia the Special Rapporteur the sale of children, child prostitution and child pornography, to integrate the protection of HIV-related human rights within their respective mandates (para. 12).

61. The Special Rapporteur intends to implement this request through the incorporation of the *International Guidelines on HIV/AIDS* (Human Rights publications, ref: HR/PUB/98/1) in his methods of work.

62. The *International Guidelines on HIV/AIDS and Human Rights* were published jointly by OHCHR and UNAIDS in February 1998. The Guidelines offer a tool for States in designing, coordinating and implementing practical and effective national HIV/AIDS policies and strategies based on three broad approaches: increasing awareness of the human rights principles underlying a positive and sustainable response to HIV/AIDS; providing action-oriented measures to be used by Governments in the areas of law, administrative policy and practice that will

protect human rights and achieve HIV-related public health goals; and increasing private sector and community participation in the response to HIV/AIDS, including building capacity and responsibility of civil society to respond ethically and effectively. Governments should be encouraged to adapt the Guidelines, through a dialogue with those most affected, to suit the priorities of the HIV/AIDS situation in their country.

Sexual exploitation and HIV/AIDS

63. UNAIDS reports that, at the end of 2001, an estimated 40 million people globally were living with HIV. In many parts of the developing world, the majority of new infections occurred in young adults, with young women especially vulnerable. About one third of those currently living with HIV/AIDS are aged 15-24, most of whom do not know that they carry the virus (www.unaids.org).

64. The link between prostitution and the increased risk of contracting HIV/AIDS is now well-established and well recognized - even in those countries for which any discussion of sexual activity has traditionally been taboo. UNAIDS reports that significantly higher rates of HIV infection have been documented among sex workers and their clients as compared to most other population groups within a country. However, when children are involved, many myths continue to persist - both as to the child's susceptibility to the virus, as well as that of his or her abuser. It is to be noted that the Special Rapporteur does not use the term "sex workers" in the context of children involved in prostitution.

65. In the years following the discovery of the HIV/AIDS virus, the demand for increasingly younger children for purposes of prostitution has continued to grow. Their abusers are no longer only paedophiles, a dictionary definition of whom is persons feeling sexual attraction towards children, but also individuals who believe that sex with younger partners is a safer option. They believe that younger people are less likely to have the virus as they have had fewer sexual partners, and some reports allege the persistence of myths in certain cultures which claim that sex with a virgin or with a child will actually cure HIV/AIDS infection in the older partner.

66. However, children in prostitution are at greater risk of contracting the virus than adults. The forced penetration of a child by a larger individual is more likely to cause injuries and bleeding by which HIV is transmitted. Children are physically weaker, less experienced and therefore less empowered to negotiate the terms of the abuse, such as an insistence on the use of a condom or refusal to be subjected to particularly violent and physically damaging sexual activity. Children working in brothels generally live in very poor conditions, often deprived of adequate food, water and medical treatment, factors which increase a child's vulnerability to contracting infection. This is particularly the case in the countries of Africa, Asia and South and Central America.

67. Even in countries where children and their abusers are more likely to have access to and actually use condoms, the risk of infection with HIV/AIDS is still high. This results from the almost systematic links between prostitution and dependency on hard, injectable drugs, often

administered with unsterile or shared needles. For example, UNAIDS reports that three quarters of infections in Ukraine are caused by injecting drug abuse. In many countries, children enter prostitution in order to feed their drug addiction, and the role of their drug dealer and pimp becomes one.

Prevention of HIV/AIDS

68. Despite the many international and national public information campaigns seeking to raise awareness as to how to protect oneself from infection, the message is clearly not reaching, being understood by or empowering those most needing to act upon it.

69 Guideline 8 (g) of the *International Guidelines* calls upon States to "ensure the access of children and adolescents to adequate health information and education, including information related to HIV/AIDS prevention and care, inside and outside school, which is tailored appropriately to age level and capacity and enables them to deal positively and responsibly with their sexuality".

70. UNAIDS has documented many "best practices" - HIV/AIDS awareness and prevention programmes which have been carried out by governmental and non-governmental organizations in several countries, and which include programmes aimed at children and those involved in commercial sexual exploitation. These best practices can be viewed on the UNAIDS web site (www.unaids.org).

71. Tragically, for many young victims of sexual abuse and exploitation, the fear of contracting the virus is not their primary concern. They may have been trafficked from brothel to brothel, suffering extreme violence on a regular basis, or they may have entered prostitution to avoid starvation. After enduring perhaps years of abuse and humiliation, they might not view their own life as having much worth.

72. Clearly, measures taken to address the spread of HIV/AIDS in young people cannot be taken in isolation from any measures to combat, or limit the effects of, both commercial and non-commercial sexual exploitation of children.

Annex

INFORMATION SHEET

Mr. Juan Miguel Petit

Special Rapporteur on the sale of children, child prostitution and child pornography

Introduction

In its resolution 1990/68 entitled "Rights of the Child", the Commission on Human Rights decided to appoint for a period of one year a Special Rapporteur to consider matters relating to the sale of children, child prostitution and child pornography. This mandate was regularly renewed, most recently in 2001, when the Commission on Human Rights in its resolution 2001/75 on the rights of the child decided to renew the mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography for another three years. Mr. Juan Miguel Petit (Uruguay) was appointed as Special Rapporteur in July 2001.

The Commission on Human Rights has "requested the Special Rapporteur, in carrying out his mandate, to continue to seek and receive credible and reliable information from Governments, United Nations bodies, specialized agencies and intergovernmental and non-governmental organizations" (Commission resolutions 1993/82, 1994/92).

The Special Rapporteur on the sale of children, child prostitution and child pornography would like to encourage the above-mentioned actors, as well as individuals, to submit to him any reliable information they may possess with regard to violations of children's rights of this nature. For this purpose the Special Rapporteur has developed this information sheet to facilitate the submission of information. Subsequently, the Special Rapporteur may decide to transmit this information to Governments with a request for their comments and details of any action taken on the matter.

The completed information sheet should be sent to:

Special Rapporteur on the sale of children, child prostitution and child pornography
c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14 avenue de la Paix
1211 Geneva 10
Switzerland

Fax: (+41 22) 917 90 06

E-mail: webadmin.hchr@unog.ch (please include in the subject box: Special Rapporteur on the sale of children, child prostitution and child pornography)

General Information

The Special Rapporteur takes action in the following cases:

Sale of children: "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration";[1]

(Sale of children could be for purposes of commercial sexual exploitation, use in criminal activities, begging, use in armed conflict, sports, forced labour, adoption, marriage, use of their organs, or other purposes.)

Child prostitution: "the use of a child in sexual activities for remuneration or any other form of consideration";[2]

Child pornography: "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes";[3]

Sexual abuse of children while in the care of parent(s), legal guardian(s), or any person who has the care of the child, including institutions, facilities and services for the care of children, at school, while in detention, etc.;

Trafficking of children for the purposes outlined above;

Where a child is at serious risk of being victim of such offences.

Notes

1. The objective of this questionnaire is to obtain to precise information on alleged violations of the rights of the child. The Special Rapporteur may raise with Governments his concerns about the incidents reported and request them for their observations on the matter.

2. If any information contained in the questionnaire should be kept confidential, please mark "CONFIDENTIAL" beside the relevant entry.

3. Do not hesitate to attach additional sheets, if the space provided is not sufficient.

4. If you have any questions concerning the completion of this form, please do not hesitate to contact the Special Rapporteur.

INFORMATION SHEET

1. GENERAL INFORMATION

Does the incident involve an individual or a group?

If it involves a group please state the number of people involved and the characteristics of the group:

Number of boys/adolescents:

Number of girls/adolescents:

Country(ies) in which the incident took place:

Nationality(ies) of the victim(s):

2. IDENTITY OF THE PERSONS CONCERNED

Note: if more than one person is concerned, please attach relevant information on each person separately.

Family name:

First name:

Sex:

Date of birth, or age:

Nationality(ies):

Ethnic background (if relevant):

3. INFORMATION REGARDING THE ALLEGED VIOLATION

Date:

Place (location - country/countries):

Time:

The nature of the incident (please describe the circumstances with reference to the categories listed under General Information):

Number of perpetrator(s):

Are the perpetrator(s) known to the victim?

Nationality of offender(s):

Agents believed to be responsible for the alleged violation:

State agents (specify):

Non-State agents (specify):

If it is unclear whether they were State or non-State agents, please explain why:

If the perpetrators are believed to be State agents, please provide details (military, police, agents of security services, unit to which they belong, rank and functions, etc.), and indicate why they are believed to be responsible; be as precise as possible.

If there are witnesses to the incident, indicate their names, age, relationship to the victim and contact address. If they wish to remain anonymous, indicate whether they are relatives, by-passers, etc.; if there is evidence, please specify.

4. STEPS TAKEN BY THE VICTIM, HIS/HER FAMILY OR ANY ONE ELSE ON HIS/HER BEHALF

Indicate whether complaints have been filed, and, if so, when, by whom and before which State authorities or competent bodies (i.e., police, prosecutor, court):

Other steps taken:

Steps taken by the authorities:

Indicate whether or not, to your knowledge, there have been investigations by the State authorities; if so, the kind of investigations, and the progress and status of these investigations. What other measures have been taken?

In the case of complaints by the victim or his/her family, how have the authorities or other competent bodies dealt with them? What has been the outcome?

5. IDENTITY OF THE PERSON OR INSTITUTION SUBMITTING THIS FORM

Family name:

First name:

Status: individual, group, non-governmental organization, intergovernmental agency, Government. Please specify:

Contact number or address (please indicate country and postal code):

Fax:

Telephone:

E-mail address:

Please state whether you want your identity to be kept confidential:

Date on which you are submitting this form:

Signature of author:

Notes

[1] Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, article 2 (a).

[2] Ibid., article 2 (b).

[3] Article 2 (c).